

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 MONTANA CHAPTER OF THE  
AMERICAN PHYSICAL THERAPY  
ASSOCIATION

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

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10           These informal contested case proceedings were filed before the  
11 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
12 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
13 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
14 resulting from its late filing of a lobbying disclosure report. The principal filed a  
15 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
16 written statement for the Commissioner's consideration.

17           Based on the written submissions of the principal, the documents of record in  
18 the Commissioner's file, and the applicable law, the Commissioner makes the  
19 following findings of fact, conclusions of law, and order.

20                   **FINDINGS OF FACT**

21           1. Montana Chapter of the American Physical Therapy Association is a  
22 principal registered with the Commissioner.

23           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
24 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
25 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
26 assessed against any person who fails to file lobbying disclosure reports within the  
27 time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Chapter of the American  
2 Physical Therapy Association was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Chapter of the American Physical Therapy  
5 Association. The email advised principals that a lobbying financial disclosure  
6 report covering the month of January, 2007 was required to be filed by February 15,  
7 2007. The email referenced the appropriate form that was required to be filed,  
8 known as a form L-5A, and noted that it was available for download on the  
9 Commissioner's website. Citing the provisions of § 5-7-208(4), MCA, the email  
10 stated: "A report must be filed in this office even though neither lobbying nor  
11 incurring of lobbying expenses may have occurred."

12           5. Montana Chapter of the American Physical Therapy Association failed to  
13 file its L-5A on or before February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Lorena Pettet  
15 stating that the January L-5A report was due February 15, 2007, but had not been  
16 received. The letter stated that a civil penalty started being assessed on February 16,  
17 2007, at \$50 per day, and would continue until the report was filed or until the  
18 penalty amount reached \$2,500. The letter urged the principal to fax the delinquent  
19 report immediately, followed by a hard copy.

20           7. On February 21, 2007, the principal filed its report. Because the report  
21 was filed 3 business days late (Monday, the 19<sup>th</sup> being a holiday), a \$150 civil  
22 penalty was assessed.

23           8. Montana Chapter of the American Physical Therapy Association  
24 requested a hearing to contest the civil penalty. The Commissioner issued a Notice  
25 of Agency Action and Opportunity for Hearing on May 1, 2007. Montana Chapter  
26 of the American Physical Therapy Association filed a written Waiver of Hearing  
27 and submitted a written statement for the Commissioner's consideration.

9. In its written statement, Montana Chapter of the American Physical Therapy Association contends that in the past it depended on written notices from the Commissioner's office regarding upcoming deadlines for filing lobbying reports, and it did not receive a notice in the mail this year. The Association requests waiver of the civil penalty because it overlooked the reporting deadline.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .” The report “must include all payments made in that calendar year prior to February 1.” § 5-7-208(4), MCA, states that if no payments are made during the reporting period, “the principal shall file a report stating that fact.”

5. §§ 5-7-208(2)(a) and 5-7-208(4),MCA, read together, required Montana Chapter of the American Physical Therapy Association to file a report for January, 2007, even if no lobbying payments were made during the reporting period.

1           6. Principal authority Lorena Pettet and Executive Director Gail Oss,  
2 writing on behalf of Montana Chapter of the American Physical Therapy  
3 Association, did not provide testimony or evidence establishing any factors or  
4 circumstances in mitigation that would justify reduction of the civil penalty. Short of  
5 filing a district court action, which can be very expensive, the automatic civil  
6 penalty for late filers remains an effective and necessary enforcement mechanism.

7                                   **MEMORANDUM OPINION**

8           The filing deadlines for lobbying disclosure reports are established by statute,  
9 and cannot be extended. Moreover, a careful reading of the reporting requirements  
10 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
11 was required to be filed, regardless whether any payments were made during the  
12 reporting period.

13           Notices of impending deadlines are not required, and the responsibility to file  
14 in a timely way lies with the principal.

15           As a courtesy and to minimize late filing, principals are regularly notified of  
16 filing deadlines via e-mail. Because of the time involved and the cost of sending  
17 multiple notices to over 1000 recipients, notices have not been sent in the mail since  
18 2001. Instead, e-mails are sent as an efficient and low-cost alternative, and each of  
19 the registration forms used by this office prominently notes that fact.

20           I urge principals to carefully review the statutory filing requirements to  
21 ensure that they are in compliance with the law and to avoid the assessment of civil  
22 penalties in the future.

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DATED this 19<sup>th</sup> day of July, 2007.

Dennis Unsworth  
Commissioner of Political Practices

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I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

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Mary Baker  
Program Supervisor